

AGENDA SUMMARY PAGE - PLANNING & DEVELOPMENT
CITY COUNCIL MEETING OF: SEPTEMBER 5, 2007

DEPARTMENT: PLANNING & DEVELOPMENT

DIRECTOR: M. MARGO WHEELER

☐ Consent ☒ Discussion

SUBJECT:

REVIEW OF CONDITION

ROC-21911 – ABEYANCE ITEM - PUBLIC HEARING - APPLICANT/OWNER: SHELLEY JACKSON - Request for a Review of Condition to delete Condition Number 4 of an approved Variance (V-0139-89) WHICH STATED THAT THE APPROVAL OF THIS VARIANCE IS LIMITED TO ONLY THESE APPLICANTS. IF THE PROPERTY IS SOLD OR RENTED, THE GUEST HOUSE SHALL BE CONVERTED BACK TO A STORAGE ROOM OR GARAGE for an existing second dwelling where only one dwelling is permitted on 0.19 acres at 1247 Douglas Drive, (APN: 162-05-210-021), R-1 (Single Family Residential) Zone, Ward 1 (Tarkanian). Staff recommends APPROVAL

PROTESTS RECEIVED BEFORE:

Planning Commission Mtg.

0

City Council Meeting

6

APPROVALS RECEIVED BEFORE:

Planning Commission Mtg.

0

City Council Meeting

9

RECOMMENDATION:

Staff recommends APPROVAL, subject to conditions.

BACKUP DOCUMENTATION:

1. Location and Aerial Maps
2. Conditions and Staff Report
3. Supporting Documentation
4. Justification Letter
5. City Council approval letter for V-0139-89
6. Returned postcard protests
7. Returned postcard protests and supports
8. Letter of protest by Tiffany Hesser
9. Submitted after final agenda – Support letters
10. Submitted at meeting – Support letter and correspondence by Attorney Katie Fellows

Motion made by LOIS TARKANIAN to Deny

Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

RICKI Y. BARLOW, LOIS TARKANIAN, LARRY BROWN, OSCAR B. GOODMAN, GARY REESE, STEVE WOLFSON, STEVEN D. ROSS; (Against-None); (Abstain-None); (Did Not Vote-None); (Excused-None)

Minutes:

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MAYOR GOODMAN declared the Public Hearing open.

ATTORNEY KATIE FELLOWS, 3773 Howard Hughes Parkway, appeared on behalf of SHELLEY JACKSON, who purchased the home in 1992 with the accessory structure existing on the property. However, when MS. JACKSON purchased the home, Condition 4 of V-0139-89 was not disclosed to her by the prior property owner. She then received notice from Neighborhood Response that she was in violation of that condition. ATTORNEY FELLOWS asked that the condition be removed based on the hardship that MS. JACKSON was not made aware of that condition, and failure to disclose could cause substantial harm to her home. A neighborhood meeting was held to discuss issues raised by neighbors, specifically to the rental of the structure. ATTORNEY FELLOWS believes that Condition 4 is unlawful and asked that it be removed in its entirety. She also submitted letters of support and an objection letter stating that Condition 4 is unlawful and should be removed.

COUNCILMAN WOLFSON indicated this raises the issue that conditions should be recorded so that when properties are sold the new buyer is made aware of those conditions. ASSISTANT CITY ATTORNEY BRYAN SCOTT confirmed that a Text Amendment was approved by the Planning Commission to have those conditions imposed on zoning approvals recorded so that a successor property owner is made aware of that action. In response to COUNCILMAN WOLFSON'S query, ASSISTANT CITY ATTORNEY SCOTT replied that under the new procedure a notice would be filed and recorded on the property with the County Recorder and then a title search would locate the document that was filed.

Regarding the objection letter submitted by ATTORNEY FELLOWS, ASSISTANT CITY ATTORNEY SCOTT replied he had not seen it and that further research is needed to determine if the condition is unlawful. That particular condition was imposed in 1989 and it was agreed upon by the previous owner.

COUNCILWOMAN TARKANIAN stated she was not aware of the objection, to which ATTORNEY FELLOWS explained that the objection arose late last night.

COUNCILWOMAN TARKANIAN remarked that the original property owner built a storage shed and then changed it into living quarters without any permits. The City Council at that time imposed a fine, as well as a condition on the property that if the property was sold, the structure would have to revert to a storage shed. Thereafter, the current owner purchased the property without knowing about the condition imposed on the property. The question came up because the applicant wants to sell the home and her neighbors are concerned because the applicant is renting the casita.

The Councilwoman felt the current owner should continue to use the casita, but the condition needed to remain in the event the property is sold. MAYOR GOODMAN added this would give the applicant's representative an opportunity to seek appropriate relief. ASSISTANT CITY ATTORNEY SCOTT advised that even though the condition may not be unlawful, it might be difficult to enforce. He suggested recording that condition on the parcel so that future property

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owners will know that they accept the property with that condition. COUNCILWOMAN TARKANIAN concurred.

COUNCILMAN BROWN pointed out the backup indicates the City has been billing a sewer bill to the smaller unit and is referenced as a mother-in-law/guest house or maid's quarters. The computer shows there are two residential units on the property. He asked if a casita is considered part of the principle dwelling or does it become a second residential unit. In the northwest, many residences have casitas, and he asked if the City has the ability to dictate if a family member reside or rent the structure, if approved. MARGO WHEELER, Director of Planning and Development Department, indicated staff has been consistent in determining that casitas cannot have separate utility meters, separate addresses and it cannot be sold separately. ASSISTANT CITY ATTORNEY SCOTT added that the Code considers them accessory structures. MS. WHEELER further added that it would be difficult to enforce whether the structure is being occupied by a family member or a renter.

MS. WHEELER added the Code requires that either the principle or the accessory structure has to be owner-occupied. MAYOR GOODMAN pointed out that the letter submitted by ATTORNEY FELLOWS suggests the opposite because the City of Las Vegas' sewer billing made a designation that the second premises was in fact a separate premises. MS. WHEELER indicated staff would follow up on that issue. ASSISTANT CITY ATTORNEY SCOTT further added that the City code allows the Council to place any condition it feels appropriate, as long as it is a reasonable condition.

COUNCILMAN BROWN added that the letter indicates that since 1997 the City has been billing the subject address for two sewer hookups. COUNCILWOMAN TARKANIAN agreed with the Councilman on how these situations are addressed. The residents in this particular area do not want property owners to rent separate structures.

COUNCILMAN REESE pointed out that in Ward 3 there are many illegal structures, where power is being stolen and structures are rented, but it is hard to prove that family members live there. These structures create many problems, and the questions then becomes if they have to be torn down. MAYOR GOODMAN acknowledged this being a good opportunity to ask the City Manager's Office to begin a discussion on a policy for consistency on this issue. This will become more prevalent with the existing real estate market and changing demographics. COUNCILMAN REESE referred to the prior item; even though it met all City codes, the applicant stated it would be for a family member, but there is no way of proving that it is not being rented.

In response to ASSISTANT CITY ATTORNEY SCOTT, COUNCILWOMAN TARKANIAN replied she would like to move forward and take action on the item. The applicant has already agreed to renting the structure to people other than family. She did agree that the issue needs to be addressed further.

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COUNCILMAN BROWN stated he would be interested adding to the dialogue newer developments that either have a casita or a house large enough to be owner occupied and how it is addressed in the City code.

COUNCILWOMAN TARKANIAN moved to deny the application with the understanding that the status quo is maintained. The present owner has been in the residence for 15 years; however, the structure cannot be rented, and any future homeowners would have to adhere to that condition. ASSISTANT CITY ATTORNEY SCOTT added that the condition would be recorded with the Recorder's Office. He clarified for the Councilwoman that Condition 4 relates to the main structure and not the accessory structure. Additionally, the current property owner would be able to rent the main structure or sell it, but the casita would have to revert back to a storage shed.

MAYOR GOODMAN declared the Public Hearing closed.

